

AMERICAN INSTITUTE OF MINERALS APPRAISERS

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AIMA's ASSOCIATE PROGRAM

By John Gustavson, 2008 President with Input from Robert
Frahme, CMA 2002-2, MAI.

Our Institute has for about a decade offered membership as Associate Member to parties, who for one reason or another did not fulfill the requirements for Certification. Let us briefly review these requirements for both Members as well as for Associate Members as they are posted in our Bylaws:

2.3 Qualifications for Membership

The qualifications for membership in the Institute shall include education, experience, and a record of personal integrity, as set forth in the following paragraphs. The interpretation and application of such requirements shall be within the sole discretion of the Executive Committee, which may in its judgment adopt and publish higher or additional requirements.

2.3.1 Education

Educational requirements for membership shall include:

1. a baccalaureate or higher degree in geology, mining or petroleum engineering, law, accounting, economics or business administration;

2. a minimum of one continuing education course in appraisal of minerals as recognized by the Executive Committee; or
3. in lieu of the foregoing, evidence satisfactory to the Executive Committee, or a Committee of Examiners duly appointed by it, of sound knowledge and proficiency in a field of appraisal of minerals.

2.3.2 Experience

Experience requirements for membership as CMA shall include a minimum of five years of appraisal of minerals experience after having satisfied the education requirements of paragraph 2.3.1. There is no experience requirement for membership as Associate Member.

As you will note, the Education requirement is the same for Member and Associate Member; however, there is no Experience requirement for an Associate Member. Therefore, while being the President a number of years ago I made it a practice to assign a mentor from our membership to assist in providing experience to new Associates.

In addition, a mentor should recommend applicable course work, which ultimately might build up the necessary competence for Certification.

The observations of the Executive Committee over the last decade are generally positive with regard to the caliber of the
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Associate Members, but we note a very poor record of advancement to full Certified Member. Therefore, as your 2008 President I have given this matter a review and some thoughts. What might have been the cause of this failure to advance? Does the responsibility rest with the Associate, the mentor, our Institute, or a combination?

I asked Bob Frahme, who has served a couple of times as mentor and who is our current Past President of the Institute. Bob indicated that his short experience with mentoring showed that the Associates with whom he became acquainted do not take the matter seriously!

He added that perhaps an Associate thinks that he already might have the knowledge? Not good, because clearly the poorest judge of one's knowledge and ability is ... yes, the Associate, himself.

That is exactly why the mentor program is important. So, we need to reach out and emphasize the need for training and subsequently assist the Associate in reaching Certification.

Another possibility is that most of our mentors have not given serious attention to their responsibility. This means that our Institute must more carefully select the mentors and work along with them in a more structured program.

This sounds good, but how many among us think that we have the time or willingness to contribute in this way? Well, ultimately it is for our own protection and fulfillment of the purpose of the Institute.

Therefore, when Associate status is granted, we need a formal, regimented program by which that Associate may advance to Certification. Simply re-submitting an application at some later, unspecified date and leaving the Associate on his own is too loose.

Now, here are some of Bob Frahme's suggestions with regard to content improvement. The program might include some of the following, and perhaps additional requirements, as the Executive Committee and the membership see it:

- Assignment to a mentor, which would require submitting two or three reports per year to the mentor for perhaps two years for discussion; (the Appraisal Institute has a mechanism for addressing the confidentiality issues that can arise from this practice);
- Required completion of certain appraisal courses, including (among others) the initial 15-hour USPAP

course and maintenance of the 7-hour update courses each two years, as required to maintain licensure;

- Submittal of a demonstration report;
- Submittal by the mentor of the Associate's satisfactory experience for certification;
- Execution of the certification procedure.
- The AIMA Executive Committee typically seats a three-person review committee to decide for or against certification. The specific mentor cannot be seated on the review committee, which is handling his Associate. A unanimous decision is required to certify an individual by the three-member committee. Applications receiving a split decision will automatically be forwarded to the Executive Committee for its review. In such a case, a two-thirds majority of the Executive Committee will be required to obtain certification. If the mentor is a member of the Executive Committee, he must abstain from voting.

Bob Frahme points out that a couple of the above requirements may show his Appraisal Institute focus; but it works. The Appraisal Institute program is more rigorous than the AIMA's needs to be, because AIMA requires a recognized degree in certain specified fields. In contrast, the Appraisal Institute allows a recognized degree in any field, with a reduction in the experience requirement for certain specified graduate degrees, as described below.

The Appraisal Institute program is five-legged (*from which formal mentoring is notably absent! And with comments in italics from Bob Frahme*):

1. A required number of years of experience (it is now three or four years of full-time experience) with reports subject to review (*this is about as close as the Appraisal Institute gets to mentoring*);
2. A required course of study, (around 370 hours, all requiring examinations). *Bob Frahme comments: I doubt that we need this much, because our applicants come in at a higher educational level;*
3. A 16-hour comprehensive examination (*we probably don't need this*);
4. Approval of a demonstration appraisal by the Appraisal Institute (*the AIMA should do this*);
5. State licensure as a Certified General Appraiser—(*this is probably unattainable for most minerals appraisers since states require 300 hours with examinations since 1/1/08*).

As the most egregious error we see in sample reports is in the area of HBU, perhaps we should require the AI's (or other provider's) course on HBU. And then perhaps with time some of the new "Associates/Now Certified Members" can become Mentors themselves.

Finally, let me put a good word in for being a mentor. It keeps us on our toes, because as mentors we need to be correct when we apply the standards of our profession as minerals appraisers. Mentoring is therefore another means of continuing education for the mentor, himself.

Also, mentoring, when conflicts of interest are avoided, gives us the opportunity to assign work on a subcontract basis to our
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younger peers. There is substantial advantage to both the Associate and the mentor, when the latter assigns components of a minerals appraisal to the Associate.

The sales comparison approach is an example. Research has to be conducted, candidate transactions have to be isolated and understood by back-calculation to unit values, and gridding of the many technical and economical parameters has to be completed, and so on.

To be fair the mentor will pay the Associate for this work; but once satisfied the mentor may include it in his own mineral appraisal and charge his client accordingly. Many of us work independently, so offering an Associate the opportunity to develop DCF forecasts, establish discount rate ranges from the public domain and similar tasks can be part of the mentoring program.

I would like to hear from each of you, if you will be available to help the Institute nurture a new generation of CMA's from among our present Associates.

John B. Gustavson, 2008 President

MINERALS HANDBOOK

John Chance has reported that he has completed Chapters 1 and 2 and that Jerry Clark has Chapters 3 and 4 underway. Subject material for each of these chapters is as follows: Chapter 1 - Purpose of Appraisal; Chapter 2 - Market Value Concepts; Chapter 3 - Basic Economic Analysis; and Chapter 4 - Valuation Methods.

John Chance also reports that Lawrence T. Gregg has furnished him considerable material which will be integrated into the Handbook. He anticipates that the "Review Committee" may be called up in the near future to review the work that has been prepared. He is still looking for White Papers from those desiring to contribute to the handbook. If you have prepared a White Paper, please contact him asap with your status report.

John's cell phone number is 937-631-0305 and his e-mail address is gotta@ctn.net

ANNUAL MEETING

Donald Warnken

Our next Annual Meeting will be held in Denver Colorado. The meeting date, place and time will be announced at a later date.

Each year our Annual Meeting is held coincident with SME's Annual Meeting. Many of our members are also members of SME. Thus, both meetings can be attended in the same time frame. Also, SME provides us a Mineral Valuation Session in their program so that our Members can present their papers. Each year the Mineral Valuation Session is chaired by an AIMA member. The Chairman and Co-Chairman for the 2009 session are, respectively, Donald Warnken and John Gustavson.

There are six papers to be presented at the SME Meeting. The **venue has not been set at this writing** but, historically, the session comes about on a Monday which would be February 23rd. But, at this writing the date has not been firmly established. AIMA Members will be advised as soon as the venue has been published. The title, author and a brief synopsis of each paper are presented below:

Current Status and Direction of International Standards in the USA and Globally

By: Trevor Ellis, Ellis International Services, Inc., Denver, Co.

Substantial adoption of uniform international standards by countries worldwide for reporting of resource estimates, valuations, and financial accounts has occurred this decade. The USA continues moving closer to adoption. The current status, direction, implications, and needs as they relate to valuation, are discussed.

Larger Parcel Issues in Mineral Property Appraisal

By: Robert B. Frahme, CPG, MAI, CMA, Gustavson Associates, Boulder, Co.

The identification of Larger Parcel in eminent domain appraisal rests on these three parameters: unity of ownership, unity of use and contiguity. These parameters tend to be more difficult to apply to mineral estates than to surface estates. Unity of use is often the most elusive to define because of inconsistent quality of exploration data and differing grades of ore. Contiguity is sometimes subordinated to unity of use. Errors in identifying any of the three parameters of larger parcel can lead to appraisals that are subject to impeachment at trial or result in unjust compensation in settlements outside of court.

Eminent Domain Appraisal, Silver Lake Iron Mine, California

By: William C. Bagby, PhD and Fred Barnard, PhD, Western Mineral Appraisers LLC, Carlesbad, CA. and Golden, CO.

Silver Lake is a privately owned iron-mine in California's Mojave Desert, east of the U.S. Army's Ft. Irwin training center. Iron is sold to cement plants in the region. The Army's proposed Ft. Irwin expansion encompassed the mine and therefore, the Army proposed condemnation to purchase the mine property. Western Mineral Appraisers performed an eminent domain appraisal according to UASFLA to meet the Army's needs. Data used in an income approach included
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Eminent Domain Appraisal, Silver Lake Iron Mine, California, *Continued from page 3*

Current and forecast market prices for iron ore used in the manufacture of Portland cement, operating costs and estimated mine life. Two critical factors were determination of iron reserve in the deposit and forecasting cement requirements for southern California and southern Nevada. Our final value opinion was used by the Army as a starting point for negotiating a purchase price. The final result was an agreement for future acquisition after the current mine-plan period ends.

Mineral Appraisal Issues in Court Testimony

By: Stuart Limb, FRICS; CMC, Inc., Scottsdale, AZ

Actual Issues which arose during the discovery process or subsequent court testimony are presented.

While most of these issues relate to the author's specialty of mineral appraisal some are more general in nature and could be of interest to those who may be involved in current or future court testimony.

Several important areas to be reviewed and agreed upon with the client and their legal council are discussed.

General observations on litigation, the discovery process, testimony and some repercussion's are also given.

Direct Sales Comparison Approach To Value

By: Michael Cartwright, CMA/RPG/CQP; Mineral Business Appraisal, Reno, NV.

The direct sales comparison approach to fair market value is the process in which market value is analyzing the market for transactions of similar properties and comparing those properties to subject property. A major assumption of the direct sales comparison approach is that FMV of a property is directly related to the transaction prices of comparable and competitive properties. Comparative sales analysis focuses on similarities and differences among property transactions that affect value. Factors affecting value of transactions include

differences in property rights appraised, the motivations of buyers and sellers, financing terms, marketing conditions at the time of sale, size, location, physical features and economic characteristics. This approach to value is primarily based on the principle of substitution, which holds that the value of a property tends to be set by the price that would be paid to acquire a substitute property of similar utility and desirability within a reasonable amount of time. This principle implies that the reliability of the direct sales comparison approach is diminished if substituted properties are not available in the market. Various examples of comparable sales will be presented.

Valuation of Donations, Conservation Easements, and Preservation Properties with Minerals

By: Gerald Clark, Certified General Appraiser; Associated General Appraisers LLC, Springfield, OH

Federal Tax incentives have increased the demand for appraisals prepared for donations of property to qualified non-profit agencies. Many individuals and companies now realize that in addition to the tax benefit for their surface rights, mineral rights can also provide additional value to their donation. Minerals appraisers should be knowledgeable of recent IRS regulation changes and the requirements to prepare and present such appraisals for these donations. They should also be aware of new responsibilities and penalties when completing their work for IRS related donations. Another issue to consider when preparing this type of appraisal may include timing of the donation. This paper will discuss how the appraiser should address the above changes and other issues while working with the client who is considering a donation or conservation easement of their property.

New Members & New Associate Member

Donald Warnken, Secretary

I am pleased to announce that John J. Manes has been accepted as a Member and that Charles Howard has advanced to Member from Associate Member. John Manes is Executive Vice President/Senior Geologist at CMC Inc., Scottsdale, AZ. Charles Howard is owner of Howard Engineering Inc., Mount Hope, WV.

I am also pleased to announce that we have a new Associate Member, Yat Chin Chan, Hong Kong, China. He is affiliated with Greater China Appraisal Limited.

Welcome and congratulations to all.

Administrative Law, Civil Procedure, Environmental Law, Government Law, Indian Law, Property Law & Real Estate

Wilderness Workshop v US Bureau of Land Management, No 08-1165

In a suit challenging a decision by agency defendants authorizing defendant/intervenor to construct, operate, and maintain a natural gas pipeline through roadless national forest land, denial of plaintiffs' motion for preliminary injunction is affirmed where: 1) plaintiffs failed to show a substantial likelihood of success as to a claim that defendants' authorization of the project violated the Forest Service's Roadless Rule; 2) they also failed to show a substantial likelihood of success as to a NEPA claim; and 3) there was no abuse of discretion as to the analysis of the remaining prongs of the preliminary injunction test.

Coastal Oil & Gas Corp. v Garza Energy Trust, No. 05-0466

In a mineral-rights suit in which plaintiffs claimed breach of implied covenants to develop a specified tract of land and to prevent drainage, judgments for plaintiffs are reversed, damages or trespass and breach of covenants vacated, and cause remanded for a new trial where: 1) under the rule of capture, subsurface hydraulic fracturing of a natural gas well that extends into another's property is not a trespass for which the value of gas drained as a result may be recovered as damages; 2) mineral lessors with a reversionary interest have standing to bring an action for subsurface trespass causing actual injury; 3) the measure of damages for breach of the implied covenant to protect against drainage is the value of the minerals lost because of the lessee's failure to act with reasonable prudence; 4) some evidence supported the jury's finding of breach of the implied covenant to develop, and whether lessor's repudiation of the lease was a defense was, on this record, a matter of law; 5) some evidence supported the jury's finding of bad faith pooling; 6) admission into evidence of a memorandum containing a racial slur was reversible error; and 7) the trial court did not abuse its discretion in refusing to abate this case for two related causes.

This lawsuit stemmed from a 2005 Hidalgo County, Texas dispute in which Garza Energy Trust was granted fourteen million dollars for the court's findings that the trust had been the victim of subsurface trespass due to hydraulic fracturing. In an appeal to the Texas Appellate Court of Corpus Christi, the pro-Garza ruling was upheld, prompting a second appeal which made its way to the state's Supreme Court in 2005.

The primary issue in the appeal was whether subsurface hydraulic fracturing of a natural gas well is a trespass when the fracturing causes natural gas drainage from another's property. The ruling that the **rule of capture** applies was a significant victory and relief for the oil and gas industry. It is an established fact that hydraulic fracturing is essential for the economic recovery of oil and gas reserves, particularly in the

shale gas plays. Thus, the threat that explorers could face significant financial liabilities has been removed by the ruling, at least in the State of Texas.

SEC Proposes Rule Changes To Modernize Oil and Gas reporting Requirements

The Securities and Exchange Commission announced on June 26, 2008, in a *Press Release*, their proposed revised oil and gas company reporting requirements. The SEC has recognized that significant changes have taken place in the oil and gas industry since the adoption of the original reporting requirements more than 25 years ago. Thus, they have recognized that improved technologies and alternative extraction methods can provide investors with additional information about a company's oil and gas reserves.

The proposed SEC's Rule changes include:

- Permitting use of new technologies to determine proved reserves if those technologies have been demonstrated empirically to lead to reliable conclusions about reserve volumes.
- Enabling companies to additionally disclose their **probable** and **possible** reserves to investors. Current rules limit disclosure to only proved reserves.
- Allowing previously excluded resources, such as oil sands, to be classified as oil and gas reserves.
- Requiring companies to report the independence and qualifications of a preparer or auditor, based on current Society of Petroleum Engineers criteria.
- Requiring the filing of reports for companies that rely on a third party to prepare reserve estimates or conduct a reserves audit.
- Requiring companies to report oil and gas reserves using an average price based upon the prior 12-month period rather than year-end prices, to maximize the comparability or reserve estimates among companies and mitigate the distortion of the estimates that arises when using a single pricing date.

The News Release can be viewed on the following *Internet* address: <http://www.sec.gov/news/29008/2008-12.htm>.

Royal Institute of Chartered Surveyors

Stuart Limb, AIMA Member and Member of the Royal Institute of Chartered Surveyors (RICS), has reported that RICS is holding its annual International Valuation 1-day conference in London, England on Wednesday November 5th between 9:00 AM and 5:00 PM.

All AIMA Members are advised that attendance at this conference qualifies for CE credits.

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